

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DAVID FREEMAN,)	
Petitioner,)	
)	
vs.)	CIVIL ACTION NO.: 2:06cv122-MHT
)	
RICHARD F. ALLEN, Commissioner,)	DEATH PENALTY CASE
Alabama Department of Corrections,)	
)	
Respondent.)	

**MR. FREEMAN'S UNOPPOSED MOTION TO EXTEND
BRIEFING SCHEDULE BY NINETY DAYS**

Comes now Petitioner, David Freeman, by and through undersigned counsel, and respectfully requests that this Honorable Court grant his Unopposed Motion to Extend Briefing Schedule by Ninety Days. In support of this motion, Mr. Freeman states the following:

1. On February 8, 2006, Keir Weyble and Christopher Seeds filed a motion for appointment of counsel in Mr. Freeman's federal habeas proceedings.
2. On February 13, 2006, this Court issued an Order appointing Keir Weyble as counsel for Mr. Freeman.
3. On February 16, 2006, Mr. Freeman filed a Petition for Writ of Habeas Corpus with this Court.
4. On February 28, 2006, this Court issued an Order directing Respondent to answer the Petition by April 7, 2006.
5. On March 2, 2006, Mr. Freeman filed a Motion For Reconsideration Of February 13, 2006, Order Declining To Appoint Christopher Seeds As Counsel For Petitioner.

6. On March 14, 2006, this Court held a conference call between itself and Mr. Weyble and Mr. Seeds. The purpose of this call was to discuss matters relevant to the appointment of counsel for Mr. Freeman.
7. On March 16, 2006, this Court issued an Order appointing Christopher Seeds as co-counsel on this case. The Court also appointed the Federal Defender's Office for the Middle District of Alabama "for the limited purpose of providing basic litigation support to Weyble and Seeds. Such support may include, but is not limited to, service of subpoenas within this state, advice and assistance concerning experts and investigative services, the use of office space, and assistance with creating, copying and filing documents with the court."
8. On March 23, 2006, Respondent filed a motion for enlargement of time in which to file his Answer.
9. On March 24, 2006, Samuel Walker and Robin Konrad, attorneys with the Federal Defender's Office, filed notice of their appearance.
10. On March 27, 2006, this Court granted Respondent's motion for enlargement of time, setting May 8, 2006, as the due date for Respondent's Answer.
11. On May 8, 2006, after receiving permission from the Court, Respondent filed his answer to Mr. Freeman's Petition.
12. On May 18, 2006, this Court issued an Order setting a scheduling/case management conference on June 28, 2006, and directing Petitioner's counsel to deliver a litigation budget to the Chambers of Judge McPherson on or before June 16, 2006. The Court also ordered that the Proposed Joint Report would be due on or before June 16, 2006.
13. On June 2, 2006, Respondent filed a Joint Motion For Enlargement Of Time To File Joint

Report allowing the due date to be June 23, 2006. This Court granted the Motion on June 6, 2006.

14. On June 16, 2006, counsel for Mr. Freeman provided an electronic copy of the litigation budget to Ms. Cindy Torbert.
15. On June 23, 2006, Respondent and Mr. Freeman filed the Joint Report.
16. On June 28, 2006, this Court held a scheduling/case management conference, at which time it indicated that Mr. Freeman's motion for discovery would be due on August 4, 2006, and the Respondent's reply would be due on August 18, 2006. The Court indicated that it would rule on the discovery motion and then set a briefing schedule.
17. Also at the June 28 scheduling/case management conference, the Court addressed *ex parte* budget issues for Petitioner's counsel. The Court ordered Petitioner's counsel to email a revised litigation budget to Ms. Tobert by July 12, 2006.
18. On July 11, 2006, counsel for Mr. Freeman provided an electronic copy of the revised litigation budget to Ms. Cindy Torbert.
19. Mr. Freeman filed his motion for discovery on August 4, 2006, and the Respondent filed his objections to that motion on August 15, 2006.
20. On August 25, 2006, this Court ordered counsel for Mr. Freeman to email Ms. Torbert with a second revised budget on or before September 5, 2006. The Order also stated that based on the experience of Mr. Weyble and Mr. Seeds in federal death penalty cases, the Court "appointed the Federal Defenders' office for the 'limited purpose of providing basic litigation support' in this case." The Court, however, stated its concern with the "amount of attorney time estimated to be spent in this case. . . ."

21. On August 30, 2006, Mr. Freeman then filed a response to the Respondent's objections to his motion for discovery.
22. On September 5, 2006, counsel for Mr. Freeman provided an electronic copy of the second revised litigation budget to Ms. Cindy Torbert.
23. Based on the language in the Court's August 25, 2006 Order, at the time of filing the second revised litigation budget, counsel for Mr. Freeman were unclear as to how responsibilities would be allocated in light of the Court's concerns relating to budgetary matters. Counsel for Mr. Freeman were also unclear as to what role the Federal Defender's Office would play in litigating Mr. Freeman's case.
24. On October 19, 2006, counsel for Mr. Freeman was electronically notified of this Court's pretrial order, order granting Mr. Freeman's motion for discovery, and sealed order regarding the litigation budget.
25. The Court's October 19, 2006 Pretrial Order setting forth the briefing schedule requires: Respondent to file his procedural default brief on or before November 3, 2006; Mr. Freeman to file his response to the procedural default brief and his merits brief on or before December 1, 2006; Respondent to file his response brief to the procedural default issues and the merits on or before December 29, 2006; and Mr. Freeman to file his reply brief addressing the merits on or before January 12, 2007.
26. The Court's October 19, 2006 Order granting discovery provided that the State must provide Mr. Freeman with discovery by November 3, 2006.
27. The Court's October 19, 2006 Sealed Order appointed Keir Weyble, Christopher Seeds, and Robin Konrad as counsel of record for Mr. Freeman. The sealed order also stated that

appointed counsel shall sign all pleadings submitted on Mr. Freeman's behalf.

28. The Court's Sealed Order is the first ruling from this Court approving funding for both out-of-state counsel and clarifying the role of Assistant Federal Defender, Robin Konrad. Prior to the entry of this order, and in light of communications from the Court preceding its entry, counsel were uncertain whether their respective responsibilities would be changed. Likewise, although the Federal Defender's Office has been providing litigation support to the best of its ability under the circumstances, all of Petitioner's appointed counsel were awaiting further clarification from this Court.
29. As this Court is aware, Mr. Freeman's case involves several claims relating to developmental and neurological problems. These claims require thorough-going review and analysis of the substantial documentary record generated during Mr. Freeman's approximately seventeen years as a ward of the State of Alabama, as well as further fact investigation and expert analysis. Because the unavailability of funding for investigative or expert assistance made this work impossible during Mr. Freeman's state post-conviction proceedings, the work must be – and is being – done in these federal habeas proceedings. Due to the combination of uncertainty of counsel's roles in this litigation going forward, competing demands for the time and efforts of counsel, investigative staff, and experts, limited expert access to Mr. Freeman at his place of confinement, and the sheer magnitude of the tasks to be accomplished, the work necessary for the proper preparation of Mr. Freeman's claims relating to developmental and neurological problems is moving forward, but cannot reasonably be completed in time to comply with the current briefing schedule.
30. Additionally, some of Mr. Freeman's other claims rely upon information he must obtain

through discovery. Assuming he receives all he is due pursuant to the Court's discovery order by the November 3, 2006 deadline, he will have less than thirty (30) days to arrange for expert review of the materials, conduct any necessary follow-up or supplementary investigation, obtain his experts' findings, and draft briefing on the merits of his claims. It would be all but impossible to accomplish all of these tasks – particularly where some of the work must be done by busy experts – under the present timetable.

31. Undersigned counsel, Robin Konrad, has conferred with counsel for Respondent, Ms. Cheryl Ann Schuetze, and Ms. Schuetze has indicated that she would join in a request to extend the briefing schedule established by this Court's October 19, 2006 order by sixty (60) days. Ms. Schuetze has also indicated that she does not oppose a request to extend the schedule by (90) ninety days.
32. Ms. Schuetze has also informed Ms. Konrad that she will be in a capital trial beginning on October 30, 2006, which she believes will last at least until November 6, 2006. As a result, Ms. Schuetze informed Ms. Konrad that she too will be unable to meet her current filing deadline of November 3, 2006 in this case.

WHEREFORE, Mr. Freeman respectfully requests that this Honorable Court grant his Unopposed Motion to Extend Briefing Schedule by Ninety Days.

Dated this 26th day of October, 2006.

Respectfully Submitted,

s/Keir M. Weyble
KEIR M. WEYBLE
Attorney for Petitioner
Blume Weyble & Norris, LLC
P.O. Box 11744
Columbia, SC 29211
TEL: (803) 765-1044
FAX: (803) 765-1143
E-Mail: keir@blumelaw.com

s/Christopher Seeds
CHRISTOPHER SEEDS
Attorney for Petitioner
P.O. Box 6725
FDR Station
New York, NY 10150
TEL: (917) 837-6760
E-Mail: chrisseeds@gmail.com

s/Robin C. Konrad
ROBIN C. KONRAD
AL BAR NO.:ASB-2194N76K
Attorney for Petitioner
Federal Defenders
Middle District of Alabama
201 Monroe Street , Suite 407
Montgomery, AL 36104
TEL: (334) 834-2099
FAX: (334) 834-0353
E-Mail: robin_konrad@fd.org

Counsel for David Freeman

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2006, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Cheryl Ann Schuetze, Esq.
Attn: Capital Litigation Division
Office of the Attorney General
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

s/Robin C. Konrad
ROBIN C. KONRAD
AL BAR NO.:ASB-2194N76K
Attorney for Petitioner
Federal Defenders
Middle District of Alabama
201 Monroe Street , Suite 407
Montgomery, AL 36104
TEL: (334) 834-2099
FAX: (334) 834-0353
E-Mail: robin_konrad@fd.org